

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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WULFCO,

Plaintiff,

v.

NYE COUNTY,

Defendant.

Case No. 2:24-cv-00223-RFB-DJA

ORDER

Before the Court is Defendant Nye County's Motion to Dismiss. ECF No. 19. For the following reasons, the Court grants the Motion to Dismiss.

I. FACTUAL ALLEGATIONS

The Yellow Pine Solar Project is a photovoltaic solar power project currently under construction in Clark County, Nevada. Kiewit Power Constructors, the general contractor for the Yellow Pine Project, contracted with Plaintiff Wulfco to provide water for the project. Plaintiff owns the water rights to a well in Nye County, Nevada. Since 2005, Plaintiff has pumped regularly from the well. On March 17, 2022, Plaintiff's application for 50 Acre-feet of water ("AFA") as provision of water for the Yellow Pine Solar Project was granted. The permit lasted a year and supplied the Yellow Pine Project as anticipated. Subsequently, Plaintiff filed a renewal application to continue to provide the water needed for construction of the Yellow Pine Project.

In 2023, the Division of Water Resources ("DWR") sent a letter to the Nye and Clark County Commissioners for a non-binding recommendation. On November 14, 2023, Nye County filed a protest letter with an attachment ("Protest Attachment"). Plaintiff alleges that the assertions in the Protest Attachment are false and designed to thwart the approval of the application by the DWR.

The Protest Attachment demanded Plaintiff's renewal application be denied unless Plaintiff drills another well in Nye County. Furthermore, it stated that Plaintiff's renewal application sought to "further degrade the water resources of the Town of Pahrump and could cause undue damage"

1 to Pahrump's underground water supply and exacerbate the decline of groundwater levels in the
2 Pahrump Valley Hydrographic Basin. Plaintiff contends that the access to water sought in the
3 renewal application does not impose additional negative impacts to the Pahrump Valley
4 Hydrographic Basin.

5 Plaintiff alleges that Nye County, in tandem with its false assertions in the protest letter
6 attachment, falsely disparaged Plaintiff in the media in an attempt to prevent approval of the
7 renewal application. Plaintiff asserts that their allegations of public disparagement are evidenced
8 by an article in the Pahrump Valley Times, quoting several Nye County Commissioners falsely
9 accusing Plaintiff of violating laws or regulations.

10 On January 30, 2024, an unmarked vehicle from the Nye County Sheriff's Office followed
11 a vehicle driven by a contractor for the Yellow Pine Project. The contractor was transporting water
12 from Plaintiff's well to the project site in Clark County. While in Clark County, the Nye County
13 police vehicle initiated a traffic stop and asked the contractor who he worked for and what he was
14 hauling. When the driver said that he was hauling water, the officer stated that in his opinion, it
15 was illegal to transport the water from Nye County to Clark County. The officer permitted the
16 driver to leave the stop without issuing a citation, or identifying why the contractor was stopped.
17 Subsequently, Plaintiff discovered that the officer who initiated the traffic stop had contacted Nye
18 County officials not directly affiliated with the Nye County Sheriff's Office regarding the
19 incident.

20 Plaintiff alleges that Nye County officials have used similar tactics in the past to harass and
21 intimidate other Nye County owners of water rights into not renewing those rights. Plaintiff alleges
22 that Nye County's actions are directed specifically against Plaintiff in an attempt to coerce Plaintiff
23 into building a new well in Nye County.

24 **II. PROCEDURAL HISTORY**

25 Plaintiff Wulfenstein Construction Company ("Wulfco") initiated this action by filing a
26 complaint on February 1, 2024. ECF No. 1. On May 20, 2024, Defendant Nye County filed a
27 motion to dismiss. ECF No. 10. On June 11, 2024, the Court granted the parties' stipulation for an
28 extension of time for Plaintiff to file an amended complaint. ECF Nos. 12, 13. Plaintiff filed the

operative First Amended Complaint (“FAC”) on June 14, 2024. ECF No. 14. Defendant filed a motion to dismiss the FAC on June 28, 2024. ECF No. 19. After an extension of time, the motion was fully briefed by July 26, 2024. ECF Nos. 20, 21, 22, 24. On November 25, 2024, Magistrate Judge, Daniel J. Albregts, granted Defendant’s motion to stay discovery pending the resolution of the motion to dismiss the FAC. ECF No. 44.

The Court’s Order follows.

III. LEGAL STANDARD

A. Motion to Dismiss

An initial pleading must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). The court may dismiss a complaint for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). In ruling on a motion to dismiss, “[a]ll well-pleaded allegations of material fact in the complaint are accepted as true and are construed in the light most favorable to the non-moving party.” Faulkner v. APT Sec. Services, Inc., 706 F.3d 1017, 1019 (9th Cir. 2013) (citations omitted).

To survive a motion to dismiss, a complaint need not contain “detailed factual allegations,” but it must do more than assert “labels and conclusions” or “a formulaic recitation of the elements of a cause of action. . . .” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). In other words, a claim will not be dismissed if it contains “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face,” meaning that the court can reasonably infer “that the defendant is liable for the misconduct alleged.” Id. at 678 (internal quotation and citation omitted). The Ninth Circuit, in elaborating on the pleading standard described in Twombly and Iqbal, has held that for a complaint to survive dismissal, the plaintiff must allege non-conclusory facts that, together with reasonable inferences from those facts, are “plausibly suggestive of a claim entitling the plaintiff to relief.” Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).

IV. DISCUSSION

A. Fifth and Fourteenth Amendment Due Process Violations

Plaintiff’s First Amended Complaint alleges that Defendants violated their Fifth and

1 Fourteenth Amendment rights when a Nye County Sheriff conducted an improper stop of
2 Plaintiff's vehicle on January 30, 2024. At the time of the stop, Plaintiff was transporting water
3 from Nye County to the Yellow Pine Solar Project in Clark County. Defendant contends that the
4 enforcement action was initiated because Plaintiff was in violation of a criminal provision. Thus,
5 Defendant argues, there was no constitutional violation.

6 The Fifth Amendment prohibits the federal government from depriving persons of due
7 process, while the Fourteenth Amendment explicitly prohibits deprivations without due process
8 by states. Bingue v. Prunchak, 512 F.3d 1169, 1174. To establish a due process violation, a plaintiff
9 must show that they had a protected property interest under the Due Process Clause and must then
10 establish that they were deprived of the property without receiving the process they were
11 constitutionally due. Clements v. Airport Authority of Washoe Cnty., 69 F.3d 321, 331 (9th Cir.
12 1995). Courts use the Eldridge test to evaluate whether a plaintiff has been deprived of
13 constitutionally due process. The test requires the balancing of the following three factors: (1) the
14 private interest that will be affected by the official action; (2) the risk of an erroneous deprivation
15 of such interest through the procedures used, and the probable value, if any, of additional or
16 substitute procedural safeguards; and (3) the government's interest, including the function involved
17 and the fiscal and administrative burdens that the additional or substitute procedural requirement
18 would entail. Mathews v. Eldridge 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

19 In this instance, Plaintiff has not adequately plead their claim alleging due process
20 violations. First, Plaintiff fails to identify a protected property interest under the Due Process
21 Clause. Second, Plaintiff fails to identify the private interest affected by the official action, any
22 risk of erroneous deprivation, or the government's interest and potential burdens that the additional
23 or substitute procedural requirement would entail. Third, The First Amended Complaint does not
24 establish whether Plaintiff is alleging violations of substantive or procedural due process. The
25 Court finds that Plaintiff has failed to adequately state a claim alleging violations of the Due
26 Process Clause.

27 The Due Process Clause of the Fourteenth Amendment prohibits states from "depriving
28 any person of life, liberty, or property, without the due process of law." U.S. Const. Amend. XIV.

1 The procedural guarantees of due process apply when a constitutionally protected liberty or
2 property interest is at stake. Wolf v. McDonnell, 418 U.S. 539, 557-58, 94 S. Ct. 2963, 41 L. Ed.
3 2d 935 (1974). The Court finds that Plaintiff has failed to state a claim upon which relief can be
4 granted because Plaintiff has not established the existence of a liberty interest. Sandin v. Conner,
5 515 U.S. 472, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995).

6 **B. Equal Protection Violation**

7 Plaintiff's First Amended Complaint alleges that Defendants "singled out" Plaintiff and
8 treated them differently than other companies or entities similarly situated when Defendant
9 directed the Nye County Sheriff to conduct an improper stop of Plaintiff's vehicle. Defendant
10 challenges Plaintiff's allegations arguing that the stop was permissible because at the time of the
11 stop, Plaintiff was illegally transporting water from Nye County to Clark County. Additionally,
12 Defendant asserts that they acted under color of the law in a non-discriminatory manner to protect
13 the interests of Nye County.

14 The Ninth Circuit has held that "The first step in equal protection analysis is to identify the
15 state's classification of groups. The next step in equal protection analysis is to determine the level
16 of scrutiny." Country Classic Dairies, Inc. v. Mont., Dep't of Commerce Milk Control Bureau, 847
17 F.2d 593, 596 (9th Cir. 1988). Equal protection analysis requires strict scrutiny of a legislative
18 classification only when the classification impermissibly interferes with the exercise of a
19 fundamental right or operates to the peculiar disadvantage of a suspect class. Mass. Bd. of Ret. v.
20 Murgia, 427 U.S. 307, 312, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976) (*per curiam*) (footnote
21 omitted).

22 Plaintiff alleges that the enforcement action resulting in their water transport vehicle being
23 stopped by Nye County Sheriffs was specifically and discriminatorily directed at Plaintiff in an
24 attempt to coerce Plaintiff into building a well in Nye County. However, throughout the First
25 Amended Complaint Plaintiff fails to identify Defendants classification of groups or to identify
26 how Defendants classification impermissibly interfered with Plaintiff's fundamental rights.

27 The Ninth Circuit recognizes equal protection claims brought by a "class of one" where
28 the plaintiff does not allege membership in a class or group. To successfully plead a "class of one"

1 equal protection claim, a plaintiff must establish that they have been treated differently from others
2 similarly situated and that there is no rational basis for the difference in treatment. 180 Land Co.
3 LLC v. City of Las Vegas, 833 F. App'x 48, 50 (9th Cir. 2020). In this instance, Plaintiff does not
4 plead sufficient facts to support their assertion that Defendants have treated similarly situated
5 parties differently. While Plaintiff makes assertions throughout the First Amended Complaint
6 regarding the alleged discriminatory treatment they received, Plaintiff provides no factual support
7 for these assertions.

8 The Court finds that Plaintiff has failed to state a claim upon which relief can be granted
9 for both its first and second causes of action.

10 **CONCLUSION**

11 For the foregoing reasons,

12 **IT IS ORDERED** that Defendant's Motion to Dismiss (ECF No. 19) is **GRANTED** and
13 Plaintiff's First Amended Complaint is **DISMISSED** without prejudice.

14 **IT IS FURTHER ORDERED** that Plaintiff may file an amended complaint by April 30,
15 2025. If Plaintiff fails to file amended complaint, the Court will dismiss the instant claims with
16 prejudice.

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19 **DATED:** March 30, 2025.

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE